

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

ELLENBETH WACHS,

Case No:

Plaintiff,

Judge:

v.

GRADY JUDD, in his official capacity as  
Sheriff of Polk County, Florida,  
and DOES 1-10,

Defendants.

---

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiff ELLENBETH WACHS (“Plaintiff” or “Wachs”), pursuant to 42 U.S.C § 1983, 28 U.S.C. §§ 2201 and 2202, sues Defendants, GRADY JUDD (“Judd”) and DOES 1-10 (hereinafter referred to collectively as “Doe Defendants”) and in support states:

**INTRODUCTION**

1. This is a civil rights action brought by the Plaintiff resulting from Defendants’ failure to respect the Separation of Church and State, and their willful participation in repeated campaigns against Plaintiff in retaliation for her beliefs in Human Secularism, colloquially known as “Atheism.” Plaintiff seeks to stop Defendant Judd’s campaign of bad faith retaliation by preventing the initiation of any new investigations, arrests, citations or complaints against Plaintiff solely as a result of Plaintiff’s assertion of a non-religious, Atheist viewpoint in the

predominantly Christian-oriented Polk County, Florida.<sup>1</sup> Defendants' conduct has been undertaken in violation of the Establishment Clause, Free Exercise Clause and Free Speech rights under the First Amendment, and the rights to Due Process and Equal Protection under the Fourteenth Amendment. Plaintiff further seeks to preliminarily and permanently enjoin Defendants from continuing to conspire with each other for the purpose of causing irreparable injuries to Plaintiff's federal constitutional rights.

### **JURISDICTION**

2. This is an action properly invoking this Court's original "Federal Question" jurisdiction under 28 U.S.C. § 1331, since the matters in controversy arise under the U.S. Constitution and laws of the United States.

3. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1331, 1343(A)(3) and 42 U.S.C. § 1983. This action arises under the First and Fourteenth Amendments to the United States Constitution and the aforementioned laws of the United States to redress the deprivation of Plaintiff's rights, immunities, protections, and privileges (as guaranteed by the United States Constitution) by Defendants acting under color of state law, statute, regulation, customs, and/or usage.

### **PARTIES**

4. Plaintiff Wachs is a *sui juris* resident of the City of Lakeland, situated in Polk County, Florida, and is the Legal Director of the Atheists of Florida, a group which advocates a secular belief system supporting the Separation of Church and State as mandated by the United States Constitution, and well-established interpretative case law. Plaintiff is a retired attorney

---

<sup>1</sup> Plaintiff wishes to make clear that she is not "anti-Christian," nor does she seek to prevent her fellow citizens from practicing their religious beliefs in a constitutional manner. Plaintiff's own beliefs, including her speech advocating for those beliefs, have been censored, and Plaintiff is seeking to end the campaign of censorship and retaliation against her while also ensuring that the beliefs of a single group do not ostracize and exclude others from the political process in an unconstitutional manner.

from the State of Pennsylvania, who now resides in Polk County, Florida.

5. At all times material hereto, Defendant Judd was the duly elected Sheriff of Polk County, Florida. Florida sheriffs are independent constitutional officers who oversee law enforcement in a given county. Defendant Judd was, at all material times, the final policy maker with respect to law enforcement efforts and decision-making within his jurisdiction. As such, Defendant Judd had the actual supervision, control, authority, and responsibility over enforcement of the laws of the State of Florida, and the obligation to ensure the protection of the constitutional rights and liberties of all citizens and residents of Polk County, Florida, including Plaintiff. Defendant Judd further had, at all material times, the authority over; 1) whether and when to initiate or pursue criminal investigations of Plaintiff; 2) whether and when to effectuate custodial arrests of Plaintiff; and 3) whether and when to search Plaintiff's properties (whether in reliance on search warrants or otherwise) and seize any and all contents seized from said properties.

6. Defendant Judd is charged with a duty to exercise his discretion to investigate violations of the law in a good faith and constitutional manner, so as not to discourage, punish, or retaliate against citizens for their beliefs and/or for exercising their constitutional rights.

7. At all times material hereto, Doe Defendants were acting under color of state law, and while acting under color of state law, either on their own, or in joint participation with Defendant Judd and/or Doe Defendants, deprived or conspired to deprive Plaintiff of her constitutional rights through their involvement in the investigations and pending criminal prosecutions described below.

8. Unless otherwise noted herein, all references to Defendants shall include their agents, employees, officials, and all others acting under express or apparent authority of

Defendants.

9. Defendants are sued in their official capacities solely for declaratory and prospective injunctive relief.

## **FACTUAL ALLEGATIONS**

### **A. Christian Pervasiveness in Polk County, Florida**

10. This case arises out of a pattern of malicious harassment and discriminatory persecution perpetrated by Defendants upon Plaintiff based on her Atheist beliefs, the content of her speech, and her legal actions/investigations with respect to Defendants, all of which have motivated Defendants to use their respective positions of governmental power in an effort to discourage her from continuing to openly espouse an Atheist viewpoint within Polk County, Florida.

11. Defendants' past and present conduct has been recognized throughout the United States as an effort to create and operate under their own set of rules purportedly dictated by perceived, ultra-conservative societal mores in Polk County. Defendants' efforts at maintaining Polk County's pervasive religiosity have attracted national media attention on numerous occasions. For example, over the course of his tenure as Sheriff, Defendant Judd has conspired to deprive residents of Polk County, Florida of their right to access virtually any form of erotic speech or entertainment through a concerted effort to intimidate any purveyor of such entertainment through over-zealous law enforcement efforts, including routine use or threats of serious racketeering charges against businesses disseminating the disfavored speech (and their landlords) in exchange for agreements to censor their speech-related activities.<sup>2</sup> Defendant Judd has even gone to the lengths of investigating website operators and convenience store clerks who

---

<sup>2</sup> A summary of these efforts can be found in the following recently-published article: Jeff Gore, "Church and State: Polk County Sheriff Grady Judd's mission from God to eliminate obscenity knows no bounds," *OrlandoWeekly.com*, Feb. 24, 2011. Available at <http://orlandoweekly.com/news/church-and-state-1.1109454>

distribute common forms of adult-oriented media in their jurisdiction.<sup>3</sup>

12. More recently, Defendant Judd initiated an unjustified, unwarranted obscenity investigation and manufactured jurisdiction over a Colorado resident with no ties to Polk County for publishing a controversial book that had become the subject of national media attention, by convincing the writer to send his last copy to investigators in response to their request.<sup>4</sup> In a recent effort to favor religion using government resources, Defendant Judd removed basketball hoops from Polk County jails and donated them to churches. As noted *supra*, Plaintiff Wachs investigated this questionable activity through a series of public records requests, thus drawing the ire of Defendant Judd. Polk County has also become infamous for its School Board members' desire to see creationist "intelligent design" taught in Polk County schools. Christian prayer rituals are routinely held before government meetings in Polk County. Polk County's conservative and religious fabric is widely recognized in Central Florida, and elsewhere. Defendants' willful failure to ignore the Separation of Church and State required by the Constitution is often recognized and criticized.<sup>5</sup>

13. Perhaps more troubling than the events that make the national news are the less publicized but equally dictatorial actions taken by government officials, usually with the involvement, support, or approval of Defendant Judd. These actions include:

- Defendant Judd quoting Biblical scripture in the official Polk County Sheriff's Office ("PCSO") newsletter, wherein Judd "themed" his 2007-2008 budget presentation as

---

<sup>3</sup> See *State of Florida v. Tammy Robinson*, Case No. CF99-01463 A-XX (Fla. 10th Cir. Ct., filed March 5, 1999); *State of Florida v. Christopher Wilson*, Case No. CF05-007738-XX (Fla. 10th Cir. Ct., filed Oct. 7, 2005); see also PCSO press release relating to prosecution of convenience store clerks; <http://www.polksheriff.org/NewsRoom/News%20Releases/Pages/FourChargedwithWholesalePromotionofObsceneMaterial.aspx>

<sup>4</sup> See <http://www.polksheriff.org/NewsRoom/News%20Releases/Pages/12202010.aspx>

<sup>5</sup> See n.2, *supra*; see also Michael Kruse, "Polk Sheriff Grady Judd makes his name on moral outrage," *Tampabay.com*, Feb. 6, 2011. Available at <http://www.tampabay.com/news/publicsafety/polk-sheriff-grady-judd-makes-his-name-on-moral-outrage/1149570>

“Standing in the Gap” because, as expressed in Ezekiel 22:30, “God was seeking someone who would ‘stand in the gap’ between good and evil for the people. In today’s world, our deputies - both law enforcement and detention - are standing in the gap to protect our communities from law breakers.” Essentially, Defendant Judd called Polk County law enforcement officers Biblical judges of that which is good and that which is evil;

- Gospel singers providing the entertainment at PCSO-hosted events – events which were held at Baptist churches;
- “Recruits” from the Polk County Juvenile Boot Camp being baptized at the First Baptist Church in Lakeland and prison inmates being “introduced to Christian principles” as part of a program between the PCSO and the Trinity Christian Center;
- The PCSO’s official newsletter touting prisoner baptism statistics under its “church adoption program” and “Faith-based dorms” initiative;
- The PCSO newsletter containing a feature story on “Bikes for Christ;”
- The PCSO’s official “Chaplaincy Program,” whose mission is to comfort, assist, and listen to Polk County citizens, being entirely made up of Christian ministers; and
- Participating in the effort by a group known as “Polk Under Prayer,” which “baptizes” intersections leading into Polk County with holy oil, in the name of Jesus Christ, and prays that the non-believers submit to the will of Christ or become “incarcerated.”

Numerous similar examples of Defendant Judd’s blurring the constitutional line between Church and State exist.

14. While the above-listed actions may seem innocent in isolation, they point to an

obvious and deeply-ingrained tradition of Christianity within the agencies and officials overseen by Defendant Judd. The Atheist, Jew, Muslim, or other non-Christian who reads Defendant Judd's newsletters receives a clear message – "you are not one of us." When coupled with statements from Defendant Judd that he does not "see the atheists out there doing a dad-gum thing for this community,"<sup>6</sup> it becomes clear that non-Christian viewpoints – and particularly Atheist viewpoints - are unwelcome in Defendants' home town.

### **B. Expressive Activities by Plaintiff and the Atheists of Florida**

15. Much, if not all, of the Defendants' conduct in this case concerns Plaintiff's involvement with the Atheists of Florida, a Florida non-profit corporation. The Atheists of Florida is a member-run organization that seeks to educate the public about Atheist ideas while defending "freedom of thought and expression as well as the complete and absolute separation of state and church as guaranteed in the First Amendment of the United States Constitution." Additional information about the organization may be found at <http://atheistsofflorida.org/purpose.htm>. Plaintiff Wachs has participated as a party plaintiff in litigation initiated by the Atheists of Florida.

16. On or about December 23, 2010, in Bartow, Florida, a municipality located within Polk County, Defendant Judd conducted a press event to announce that he would be removing all basketball rims, posts, and nets from the exercise yards at Polk County jail facilities and donating the equipment to eight Polk County churches. News videos of the event showed inmates and Sheriff's personnel removing a basketball goal from jail property and thereafter installing it at the Turning Point Christian Church located near the jail. In televised comments delivered at the church, Defendant Judd connected the December 23rd relocation event to a Christmas theme,

---

<sup>6</sup> Jeff Weiner, "Judd on atheist group controversy: 'We don't discriminate against churches'," *OrlandoSentinel.com*, Dec. 30, 2010. Available at: [http://articles.orlandosentinel.com/2010-12-30/news/os-grady-judd-responds-atheist-compla20101230\\_1\\_secular-groups-church-and-state-atheists](http://articles.orlandosentinel.com/2010-12-30/news/os-grady-judd-responds-atheist-compla20101230_1_secular-groups-church-and-state-atheists)

stating: "The inmates may think I'm the Grinch, but the kids at this church think I'm Santa Claus."

17. Aware of (and apparently mocking) the Atheists of Florida's concern about religious favoritism with the basketball equipment, Defendant Judd has been quoted as saying that "If there is no God, why do they care?"

18. On or about December 28, 2010, Atheists of Florida delivered a letter to Sheriff Judd requesting that he cease and desist the transfer of basketball equipment from the county's jail facilities to the churches. The letter was signed by Plaintiff Wachs, a retired attorney who was admitted to the Pennsylvania bar in December 1993, and included the suffix "Esq" next to her name.

19. On or about January 4, 2011, Atheists of Florida sent a public records request to the Freedom of Information Officer with the Polk County Records Management Office seeking information related to the recent transfer of jail basketball equipment to the area churches. The letter was signed by Plaintiff Wachs and included the suffix "Esq" next to her name.

20. On or about January 21, 2011, Plaintiff went to Defendant Judd's office in Bartow to retrieve the requested records from the Sheriff's Office Attorney, Anne Gibson. Plaintiff paid a sixty-seven dollar (\$67.00) charge from her personal bank account, which was later reimbursed with an Atheists of Florida check for the same amount. This check would later be seized by Defendant Judd and mischaracterized in criminal discovery disclosures as a "check[] to Ms. Wachs for legal services" in the UPL Action brought against Plaintiff Wachs as described below.

21. On or about February 16, 2011, the Atheists of Florida requested additional information from Defendant Judd regarding the transfer of jail basketball equipment to area churches. The new request asked for clarifications and additional information regarding



documents submitted in January by Defendant Judd in response to the organization's January 4, 2011 inquiry.

### **C. The First Retaliatory Arrest**

22. On or about March 3, 2011, Defendant Judd, in consort with Doe Defendants, without probable cause, and in retaliation for her beliefs and expressive activities referenced above, coordinated the custodial arrest of Plaintiff on charges of “misrepresent[ing] [her]self as qualified to practice law” purportedly in violation of § 454.23 *Fla. Stat.* (2010) (“the UPL Action”). Approximately twenty (20) law enforcement personnel, dressed in SWAT-style paramilitary attire, and other authorities in civilian attire, arrived at her home to conduct a broad search and effectuate the arrest. They arrived in over one dozen unmarked vehicles including one crime lab truck. Deputies placed Plaintiff in handcuffs, served her with a search warrant, and transported her to the Polk County jail. Upon information and belief, this unnecessarily dramatic show of force was intended by Defendants, acting alone or in consort with each other, to send a message to Plaintiff that her involvement with the Atheists of Florida and challenges to assertedly unconstitutional religious practices in Polk County were unwelcome and would no longer be tolerated.

23. Defendant Judd's agents searched the Plaintiff's home for several hours, confiscating computers, a cell phone, documents, and other items. Defendant Judd specifically seized privileged communications with Plaintiff's role as a party in litigation brought by the Atheists of Florida, notes relating to her deposition in that case, and information Plaintiff uncovered during her investigation of potential unconstitutional activities undertaken by Defendant Judd in using government funds to purchase items for religious institutions. In the course of the search, Plaintiff's home was ransacked as law enforcement searched for evidence

of any documents authored by Plaintiff “purporting to instruct on or explain legal principles.”<sup>7</sup> A copy of the documents relating to the Search Warrant and subsequent arrest of Plaintiff Wachs are attached as Composite Exhibit A.

24. Notably, the Search Warrant application limited the entire search to documents authored or received by Plaintiff in connection with the Atheists of Florida, Inc. Also, despite the heavy reliance that the supporting Complaint Affidavits placed on Plaintiff’s alleged use of “Esq” in correspondence, the Search Warrant application did not include any description of items whereby Plaintiff used “Esq” on documents. As stated, the Search Warrant application sought permission to seize documents pertaining to Plaintiff’s involvement with the Atheists of Florida, and it constituted an overbroad, general warrant allowing Defendant to rifle through Plaintiff’s personal belongings and seize items pertaining to litigation and other communicative materials protected by the First Amendment.<sup>8</sup> As such, Defendant Judd violated Plaintiff’s Fourth Amendment rights by relying on a facially defective warrant sought for an improper purpose, and used to further a campaign of retaliatory actions against Plaintiff.

25. The Complaint Affidavit relating to the UPL Action was largely based on the statements and/or interviews of three witnesses: (1) Ann Gibson, Legal Affairs Director for the Polk County Sheriff’s Department; (2) Gow Fields, Mayor of the City of Lakeland; and (3) Stacy Butterfield, member of the Board of Directors of the Lake Victoria Homeowners Association (which is the neighborhood where Plaintiff resides). According to the Complaint Affidavit, Butterfield is employed by the local Court Clerk’s office.

---

<sup>7</sup> Read literally, § 454.23, *Fla. Stat.* (2010) could apply to a broad range of conduct that clearly does not constitute the unauthorized practice of law, such as merely teaching a business law class in high school.

<sup>8</sup> In the course of the unconstitutional search, investigators seized a safe from Plaintiff’s home that she, at the time, shared with another individual. Ultimately, Defendant Judd’s agents forced open the safe and found approximately two grams of cannabis and a pipe belonging to her former roommate. As a result, on or about May 24, 2011, Plaintiff Wachs was charged with misdemeanor possession of cannabis and drug paraphernalia arising from this illegal seizure.

26. Gibson's and Fields' "impressions" that Plaintiff was a licensed and practicing attorney were allegedly based on Plaintiff's work with the Atheists of Florida organization, as described above.

27. Butterfield's "impression" that Plaintiff Wachs was a licensed and practicing attorney allegedly came from circumstances surrounding a lawn dispute in which Plaintiff Wachs allegedly indicated that she "was an attorney."<sup>9</sup>

28. Despite the fact that none of the witnesses' statements in the Complaint Affidavit indicated that they thought Plaintiff was holding herself out to be qualified to practice law *in this state*, the signatory to the Complaint Affidavit, law enforcement reached the unwarranted conclusion that it was apparent that the witnesses "could have easily thought that [Plaintiff] was an active and practicing attorney *in the State of Florida*" (emphasis added).

29. Witnesses Butterfield and Fields, along with Defendant Judd, are on the Board of Directors of Polk Vision, Inc., "a broad, community-led partnership of organizations, businesses, government and individuals acting collectively to ensure implementation of Polk County's community vision." Upon information and belief, and as described below, Plaintiff's viewpoint on religion and the First Amendment does not fit within "Polk County's community vision." As a result, Defendant Judd conspired with Fields, Butterfield and Doe Defendants, in order to ensure the establishment of an Atheist-free Polk County, beginning with the persecution of Plaintiff Wachs.

30. Plaintiff's arrest in the UPL Action, has caused substantial interruption of her online jewelry business, significant emotional stress and associated flare-up of her Multiple Sclerosis symptoms, and substantial damage to her reputation in the community.

31. Plaintiff's arrest in connection with the UPL Action have been criticized by many

---

<sup>9</sup> As noted, Plaintiff is a retired attorney.

in the community, including an editorial in the local paper, which referred to the case as a persecution based on her Atheist beliefs that “smacks of retribution in favor of Polk’s political class.”<sup>10</sup> Other media outlets and legal scholars have called the prosecution a “silly distraction”<sup>11</sup> and “highly disturbing,” which, in the context of Plaintiff’s “unpopular exercise of free speech,” “raises flags of retaliatory action.”<sup>12</sup>

#### **D. The Second Retaliatory Arrest**

32. On Sunday, May 1, 2011, Defendant Judd escalated his crusade against Plaintiff by arresting her yet again; this time based solely on *spoken words* emanating from her home. On March 13, 2011, Defendant Judd’s deputies were present at home of Mr. Otto Lehman (“Lehman”), a neighbor of Plaintiff Wachs. Based on information and belief, these law enforcement agents sought to orchestrate a dispute between Lehman and Plaintiff Wachs, to use as a basis for future criminal charges. As a result of events of March 13, 2011, Defendant Judd, without probable cause, and in retaliation for her beliefs and expressive activities referenced above, arrested Plaintiff Wachs on charges of “simulation of a sexual act in the presence of a child” purportedly in violation of § 800.04(7), *Fla. Stat.* (2010) (“the Lehman Action”). The arrest based solely on alleged erotic “moans” or words spoken by Plaintiff Wachs in her own home, which were allegedly overheard by Lehman’s minor child. The Complaint Affidavit and other records related to the Lehman Action are attached as Composite Exhibit B.

33. Prior to the arrest, as a result of Lehman’s dislike for Plaintiff Wachs and her beliefs, Lehman sought a civil injunction preventing Plaintiff from contacting him. Notably, the

---

<sup>10</sup> See Glenn Marston, “Official’s Should Ignore Atheist’s ‘Esq.’,” *TheLedger.com*, April 24, 2011. Available at <http://www.theledger.com/article/20110424/COLUMNISTS0308/104245006?p=4&tc=pg>.

<sup>11</sup> See Kemp Brinson, “Charges Against Atheists’ Leader a Distraction,” *Polk Law Blog*, April 6, 2011. Available at <http://www.polklawblog.com/archives/charges-against-atheists-leader-a-distraction>.

<sup>12</sup> See Jonathan Turley, “Florida Prosecutors Charge Leading Atheist Advocate With Unauthorized Practice of Law Due to the Use of Esquire,” *Jonathan Turley blog*, April 1, 2011. Available at: <http://jonathanturley.org/2011/04/01/florida-prosecutors-charge-leading-atheist-advocate-with-unauthorized-practice-of-law-due-to-the-use-of-esquire/>.

first sentence of Lehman's petition for injunction tellingly referenced the Atheists of Florida and characterized Plaintiff as "anti-Christian." A civil injunction hearing occurred on April 26, 2011. Due to Lehman's failure to serve Plaintiff with proper notice of the hearing, the judge reset the hearing date and advised that Plaintiff must be formally served first. Inexplicably, one or more representatives from Defendant Judd's office decided to attend this routine civil injunction hearing. Defendant Judd's representative, Detective Eric Daniel, informed the Assistant State Attorney Bradford H. Copley ("ASA") that he was at the courthouse for the hearing. Seizing the opportunity to continue his campaign of harassment against Plaintiff, Defendant Judd's agents, in consort with Doe Defendants, immediately arranged a meeting with Lehman and his wife after the hearing, in the attempt to generate some potential basis for additional persecution of Plaintiff, by misusing the state criminal law enforcement process.

34. After being escorted to the ASA's office, the ASA and Defendant Judd's agents then interviewed Lehman in an effort to uncover facts relating to the incident to support their campaign of harassment. According to the probable cause affidavit in the Lehman Action, Lehman and Lehman's son allegedly heard Plaintiff make "sexual sounds" from an open window in Plaintiff's house. The affidavit clearly indicated that it was Lehman who thought the sounds were "sexual sounds," while Lehman's minor son thought the sounds indicated that Plaintiff "was being injured." Based on these "sounds" and Lehman's dislike of and desire to silence Plaintiff's minority viewpoint, Defendant Judd came to the preposterous conclusion that Plaintiff had committed the felony offense of lewd or lascivious exhibition in the presence of a victim who is less than 16 years of age, allegedly in violation of § 800.04(7) *Fla. Stat.* (2010).

35. As with the UPL Action, the public was outraged at such an obvious attempt to continue Defendants' campaign of censoring, retaliating and discriminating against Plaintiff

based on her beliefs and the viewpoint of her speech. National media outlets covered the story, and legal scholars cautioned that “Meg Ryan should stay clear of Florida.”<sup>13</sup> The local paper included articles and published letters calling the arrests “trumped up,”<sup>14</sup> “scary,”<sup>15</sup> “extreme,”<sup>16</sup> and “Gestapo-like,”<sup>17</sup> and called on officials to withdraw these “acts of retribution.”<sup>18</sup> While much of the media coverage of this event has humorously focused on the absurdity of such an arrest, the constitutional implications are anything but humorous.

36. But for Plaintiff’s minority viewpoint and beliefs at odds with those of the Defendants, she never would have been arrested in the Lehman Action. While Polk County does have a reputation as a conservative community, Plaintiff is skeptical that Defendant Judd and his agents routinely cruise neighborhoods at night listening for moaning sounds drifting out of open windows in an attempt to protect children from such allegedly lewd and lascivious conduct. Rather, Plaintiff firmly believes that she was arrested not for alleged “sexual sounds,” but because Defendants’ censorial think-tank crafted yet another opportunity to arrest and silence a vocal Atheist, even if Plaintiff Wachs would ultimately succeed in winning the criminal case on the merits.

37. Unless otherwise noted, all actions, omissions, and statements attributed to the Defendants were undertaken in their official capacity, following established policy, practice, and procedure of Defendants. Unless otherwise noted, all actions taken by Defendant Judd are

---

<sup>13</sup> See Jonathan Turley, “I’ll Have What She’s Having: Leading Atheist Arrested For Making Sexual Noises,” *Jonathan Turley blog*, May 11, 2011. Available at: <http://jonathanturley.org/2011/05/11/ill-have-what-shes-having-leading-atheist-arrested-for-making-sexual-noises/>.

<sup>14</sup> “Second Arrest For Atheist: Bill of Rights Not for Polk,” *TheLedger.com*, May 6, 2011. Available at: <http://www.theledger.com/article/20110506/NEWS/110509576?p=2&tc=pg&tc=ar>

<sup>15</sup> Carol Corley, Letter to the Editor, “Raid on Atheist Leader Scary,” *TheLedger.com*, May 2, 2011. Available at: <http://www.theledger.com/article/20110502/EDIT02/110509894?tc=ar>

<sup>16</sup> David N. Reifsnnyder, M.D., Letter to the Editor, “Treatment of Atheist Extreme,” *TheLedger.com*, May 16, 2011. Available at: <http://www.theledger.com/article/20110516/EDIT02/110519624?tc=ar>

<sup>17</sup> *Id.*

<sup>18</sup> “Second Arrest For Atheist: Bill of Rights Not for Polk,” *supra*.

intended to include his agents, employees, officials and deputies.

38. All conditions precedent to the bringing of this action have been performed, waived, or excused.

39. Plaintiff has hired undersigned counsel to prosecute this action, and has incurred attorneys' fees in connection therewith.

#### **E. Legal Allegations**

40. Upon information and belief, the investigation into Plaintiff Wachs' status as a member of the Florida Bar was initiated not out of a desire to protect the public from an imposter attempting to engage in the unlicensed "practice of law," but, rather, because of Wachs' involvement with the Atheists of Florida, her status as a plaintiff in litigation initiated by that organization, and her investigation into the donation of publicly-funded basketball equipment to religious organizations.

41. Defendant Judd conspired with others, including Doe Defendants, to contrive and initiate the unwarranted UPL Action against Plaintiff in bad faith retaliation for her exercise of rights guaranteed to Plaintiff under the First and Fourteenth Amendments to the U.S. Constitution.

42. Similarly, The Lehman Action was instituted not out of a desire to protect children from sexual abuse or to otherwise legitimately enforce Florida's criminal laws, but rather to harass, intimidate, silence, and punish Plaintiff as a result of her outspoken Atheist beliefs and activities. Defendant Judd conspired with others, including Doe Defendants, to contrive and initiate the UPL Action and the Lehman Action against Plaintiff in bad faith retaliation for her exercise of rights guaranteed to Plaintiff under the First and Fourteenth Amendments to the U.S. Constitution.

43. Both the UPL Action and the Lehman Action were initiated by Defendants, alone or in consort with each other, based on an illegal motivation and for the improper purpose of punishing Plaintiff for her beliefs, and intimidating her into silence on issues of public concern.

44. Defendant Judd, with agreement and assistance from Doe Defendants, conspired against Plaintiff by planning and setting in motion the UPL and Lehman Actions with assistance from private citizens who, by nature of their joint participation with Defendant Judd, were acting under color of state law.

45. The state criminal courts are not sufficiently protective of Plaintiff's constitutional rights, as evidenced by the fact that she has already been held repeatedly in jail on unwarranted and retaliatory criminal charges, until securing a bond in each case. The state courts have no effective ability to provide the necessary relief putting an end to Defendant Judd's misuse of the state criminal system to repeatedly arrest Plaintiff on frivolous criminal charges, thereby resulting in revocation of pretrial bonds posted in already-filed cases, and additional periods of illegal incarceration – potentially without the ability to obtain a future pretrial release bond.

46. The federal courts are uniquely suited for protecting and enforcing constitutional guarantees, and preventing future violations of Plaintiff's civil rights.

47. Absent intervention by this Court in the form of injunctive relief, Plaintiff is in genuine fear that Defendant Judd will continue to arrest her again and again, and repeatedly punish her through periods of pretrial incarceration and exorbitant bond expenditures, until she is rendered indigent and unable to continue defending herself and asserting her constitutional rights.

48. Given the outrageous and unsupported allegations leveled against her in the UPL Action and the Lehman Action, Plaintiff is in genuine fear for her safety should she be arrested



and incarcerated again, as a result of the actions of Defendants' agents and/or other inmates, during periods of incarceration.

49. Plaintiff has a right to be free from unwarranted, repeated abuse of the state criminal system by Defendants, under the First and Fourteenth Amendments to the U.S. Constitution.

*I. Deprivation of First and Fourteenth Amendment Right to Freedom of Speech*

50. Defendant Judd's conduct in effectuating the search warrant in the UPL Action was an attempt to silence Plaintiff's speech both in public forums and in retaliation for Plaintiff's involvement in petitioning this Court for redress in litigation initiated by the Atheists of Florida, and her questioning of Judd's donation of the basketball hoops.

51. Defendant Judd's conduct in investigating and arresting Plaintiff in connection with the UPL and Lehman Actions is part of a larger bad faith retaliatory scheme by Defendants to cause a prior restraint upon Plaintiff's constitutionally protected speech and is based on Defendants' objections to Plaintiff's viewpoint and the content of her speech.

52. Irrespective of the individual validity of any given state criminal prosecution against Plaintiff, the sum total of the actions taken against her constitute a bad faith prosecution by Defendants in retaliation for her beliefs and expressive activities.

53. Plaintiff's speech, expression and advocacy relating to her Atheist beliefs are well within the ambit of protected speech under the First and Fourteenth Amendments.

54. The UPL and Lehman Actions were initiated with bad faith motivation, as the goals are to send a chilling message to others who wish to engage in First Amendment freedoms and rights in Polk County that they also may be subjected to prosecution for their beliefs. Contrary to Defendant Judd's assertion that "If there is no God, why do they care?," Plaintiff is

deeply concerned about co-mingling of religion and government pursued by Defendants.

55. Defendants have deprived Plaintiff Wachs of the First and Fourteenth Amendment rights of freedom of speech, assembly and association in violation of the U.S. Constitution and 42 U.S.C. § 1983

## *II. Violation of the Establishment Clause of the First Amendment*

56. Defendants' conduct attempts to thwart Plaintiff's efforts, both individually and as a representative of the Atheists of Florida, to ensure that Polk County government officials not prefer one religion over another.

57. Defendants' conduct has resulted in an excessive entanglement of religious and governmental activities.

58. Defendants' conduct seeks to advance specific religious activities in Polk County, Florida, and silence critics of governmental involvement in religious activities, such as Plaintiff.

59. Defendants' conduct with respect to Plaintiff Wachs violates the Establishment Clause of the First Amendment made applicable to the states through the Fourteenth Amendment, in violation of the U.S. Constitution and 42 U.S.C. § 1983.

## *III. Deprivation of Fifth and Fourteenth Amendment Equal Protection Rights*

60. Plaintiff is a class of one for purposes of equal protection.

61. Plaintiff, as a Polk County resident, is being treated differently than any other resident, with regard to the enforcement of the state's criminal laws, in that she is being investigated and arrested for conduct that nobody else would be under similar circumstances. Defendant Judd is exercising his discretion in such a way as to single her out for investigations and arrests for alleged unlicensed practice of law and lewd acts, in retaliation for 1) her Atheist beliefs and 2) her investigation of the Defendant Judd's unconstitutional conduct.

62. Defendant Judd, including Doe Defendants jointly participating with him, acting under color of state law, deprived Plaintiff of her right to equal protection under the laws by treating her differently than other citizens similarly situated based on her religious beliefs and the viewpoint of her speech.

63. No rational basis existed for the differential and discriminatory treatment afforded to Plaintiff Wachs by Defendants.

64. Defendant Judd, on his own or in consort with the Doe Defendants, has maliciously sought to misuse his position of power to effectuate a *de facto* prior restraint on Plaintiff's speech and expressive conduct through a campaign of harassment and retaliation in the hopes of winning a war of attrition until Plaintiff is no longer in a financial position to vindicate her rights in court.

65. Defendants' acts have been for a discriminatory and unconstitutional purpose.

66. The discriminatory treatment of Plaintiff Wachs by Defendants was intentional and arbitrary.

67. Defendants have deprived Plaintiff Wachs of the guaranty to Equal Protection in violation of the U.S. Constitution and 42 U.S.C. § 1983.

#### *IV. Deprivation of Fifth and Fourteenth Amendment Due Process Rights*

68. Defendants' conduct toward Plaintiff, as alleged above and including but not limited to the investigations and arrests in the UPL and Lehman Actions, has resulted in an improper deprivation of Plaintiff's liberty as provided under the Bill of Rights.

69. By using improper acts of intimidation, harassment, and discrimination, Defendants have deprived Plaintiff of her First Amendment rights, including those rights related to free speech and the establishment of religion, without due process as required under the law.

70. Defendants have deprived Plaintiff Wachs of the guaranty to Equal Protection in violation of the Fifth and Fourteenth Amendments and 42 U.S.C. § 1983.

### **NEED FOR RELIEF**

71. Plaintiff is faced with irreparable injury in the form of censorship of her constitutionally-protected speech and expression and her illegal incarceration in retaliation for her beliefs and her investigation of unconstitutional activity by Defendants.

72. In the absence of prospective injunctive relief by this Court, Defendants would be free to continue their pattern of bad faith unconstitutional conduct toward Plaintiff Wachs in the future.

73. Should this Court not enter an injunction as requested herein, Plaintiff is uncertain whether she will have the resources to contest the Defendants' unconstitutional onslaught, and she fears the Defendants will prevail through waging a war of attrition with threats of mounting criminal penalties. The burden on Plaintiff in the absence of the requested relief therefore far outweighs the burden, if any, that Defendants would suffer.

74. Defendants' actions have resulted and will continue to result in the denial of Plaintiff's constitutional rights of free expression, freedom of speech, due process and equal protection, and a chilling effect on the exercise of these rights by Plaintiff and all those similarly situated. Accordingly, it is in the public interest to prevent these bad faith investigations, arrests, and citations from occurring in the future.

75. Defendants' actions, conduct, and activities violate Plaintiff's rights of freedom of speech, freedom of expression, liberty, property, due process and equal protection under law as guaranteed by the United States Constitution and have deprived Plaintiff of the enjoyment and protection of those rights by color of state law, statute, custom, regulation, and/or usage. These

deprivations are now occurring and will continue to occur in the future if not preliminarily and permanently enjoined by this Court.

76. Defendants' actions were malicious, willful, wanton, and/or in reckless disregard of Plaintiff's constitutional rights.

77. Plaintiff has no adequate remedy at law and will continue to suffer such irreparable harm and injury unless this Court grants preliminary and permanent injunctive relief. Plaintiff is in fear that, without such relief, Defendants will continue to proceed with their unlawful actions, including additional investigations, arrests, searches and seizures and interruption of Plaintiff's legitimate business, personal, and expressive activities, including but not limited to her work with the Atheists of Florida, that will cause Plaintiff to incur further expenses to defend against pending and future criminal prosecutions and institute appropriate and necessary appellate proceedings and other monetary damages.

78. Plaintiff is unable to adequately litigate her federal constitutional claims in state court and is further unable to use the state criminal courts to seek a halt to the increasingly serious pattern of unconstitutional conduct aimed toward her by Defendants. Plaintiff can only defend a single criminal case, one at a time, but cannot obtain a cessation of the bad faith campaign of harassment absent intervention by this Court.

79. Plaintiff has a right not to face continued criminal investigations, arrests, complaints, or citations which are initiated for an improper, retaliatory, and bad faith purpose.

80. Plaintiff has incurred considerable and significant legal costs and will continue to incur same in the future.

81. Plaintiff has incurred and will continue to incur substantial attorneys' fees in the prosecution of this action, and this Court has jurisdiction to award Plaintiff such fees under 42

U.S.C. § 1988.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

A. That judgment be entered finding in favor of Plaintiff on the claims set forth above;

B. That the Court declare the rights of the Plaintiff, including without limitation a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, declaring, specifically, that Defendants' conduct, including their conduct in conspiring to execute and then executing the investigations, arrests, searches, and seizures in the UPL and Lehman Actions, denied Plaintiff her right to freedom of speech, freedom from religious favoritism and/or establishment, equal protection, and due process of the law under the United States Constitution;

C. That the Court grant such further relief pursuant to 28 U.S.C. § 2202, as is necessary and proper under the circumstances;

D. That the Court preliminarily and permanently enjoin Defendants from initiating and/or executing any and all future investigations and/or arrests of Plaintiff that violate Plaintiff's constitutional rights;

E. That upon appropriate notice and hearings, the Court grant a permanent injunction prohibiting Defendants, their officers, employees, agents, successors, or assigns, and those persons in active concert or participation with them, from interfering with Plaintiff's First Amendment rights of free speech and association, and her Fourteenth Amendment rights to Due Process and Equal Protection of the law, and accordingly, that Defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or

participation with them be forthwith:

1) enjoined and restrained from interfering with the exercise of the Free Speech rights of Plaintiff and prohibited from taking any adverse action against Plaintiff for exercising her constitutional rights of Free Speech, Free Association, Due Process and Equal Protection of the law without discrimination as to the content or viewpoint of her speech;

2) enjoined to instruct, train, and brief all public employees, personnel, deputies, investigators, officials, and those persons in active concert or participation with Defendants, concerning the proper boundaries of citizens' rights under the First Amendment (including the Free Speech Clause and Establishment Clause) of the United States Constitution, and further, to implement appropriate policies, procedures, and protocols to supervise and train personnel to safeguard and protect those rights;

F. That this Court retain continuing jurisdiction over this action and Defendant Judd, in addition to any Doe Defendants named in the future, to ensure that their campaign of intimidation and harassment ceases and is not re-initiated in the future;

G. That Plaintiff be awarded reasonable attorneys' fees pursuant to 42 U.S.C § 1988, together with costs of this litigation; and

H. That the Court grant such other and further relief as it may deem proper.

### **JURY TRIAL**

Plaintiff demands a jury trial on all matters so triable as a matter of right.

Dated this 23<sup>rd</sup> day of June, 2011.

**WALTERS LAW GROUP**



---

Lawrence G. Walters  
Florida Bar No.:776599  
[larry@firstamendment.com](mailto:larry@firstamendment.com)  
Kevin W. Wimberly  
Florida Bar No. 0057977  
[kevin@firstamendment.com](mailto:kevin@firstamendment.com)  
781 Douglas Ave.  
Altamonte Springs, Florida 32714  
(407) 975-9150 (phone)  
(407) 774-6151 (fax)


Attorneys for Plaintiff



approved by Nred Copley 1/15/11  
3-3-11**Application For Search Warrant**

I, the undersigned affiant, hereby make this application for the issuance of a search warrant and, in support of this application, stated under oath as follows:

1. My name is: J. Eric Daniel
2. My place of residence is: Polk County, Florida
3. My occupation is: Detective/Deputy Sheriff.
4. The place to be searched is a private dwelling occupied as such and a weapon, instrumentality, or means by which a felony has been committed is contained therein and/or evidence relative to proving that a felony has been committed is contained therein. The felony involved is engaging in the unlawful practice of law, F.S.S. 454.23.
5. Attached hereto as an exhibit, and specifically made a part hereof, is a particular description of the property to be searched for and, if found, seized.
6. Attached hereto as an exhibit, and specifically made a part hereof, is a particular description of the place(s) and/or thing(s) to be searched.
7. The name of the person(s) who occupies said place is/are: EllenBeth Wachs and/or any/all John/Jane Does whose names are unknown to your affiant.
8. Attached hereto as an exhibit, and specifically made a part hereof, is a statement of the facts constituting probable cause for the issuance of a search warrant, which said facts affiant believe to be true.

  
Affiant

Polk County Sheriff's Office Intelligence Unit

State of Florida  
County of Polk

This day personally appeared before me, the undersigned authority duly authorized to administer oath, one J. Eric Daniel, who being by me first duly sworn, deposes and says that he is the person named as affiant in and who executed the above and foregoing Application for Search Warrant and the exhibits hereto and that each and every allegation contained in said Application for Search Warrant and the exhibits thereto is true and correct, except as to matters which are alleged on information and belief, and as to such matters he believes them to be true.

Dated this 3<sup>rd</sup> day of March, 2011.

  
Judge of the County Court,  
In and for Polk County, Florida.

Barry W Bennett  
Printed Name of Judge

**Search Warrant**

In the name of the State of Florida:

TO:

1. The Sheriff Grady Judd of Polk County Florida and his authorized deputies;
2. The State Attorney of the Tenth Judicial Circuit and his authorized investigators;

I, the undersigned Judge, do hereby certify that:

1. Application, attached as exhibit A, has this day been made to me for the issuance of a search warrant.
2. Said application is duly subscribed and sworn to.
3. Said application particularly describes:
  - a. The thing(s) to be seized.
  - b. The person(s), place(s), thing or things to be searched.
  - c. The nature of the evidence to be obtained.

And sets forth the facts tending to establish the grounds of said application and the probable cause for believing that such grounds exist.

4. I have examined said application and proofs submitted to me and am satisfied that the probable cause exists for the issuing of the search warrant applied for.
5. The person(s), place(s), thing or things to be searched and the thing or things to be seized are described in the attachment hereto, which is hereby made a part hereof.

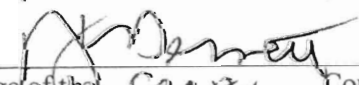
Now, therefore, you or either of you, with such lawful assistance as may be necessary, are hereby commanded, in the daytime, night time, or on Sunday as the exigencies of the situation may require:

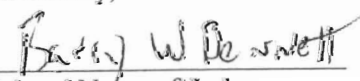
1. To search the afore-described place/ thing.
2. To enter and search the afore-described, attached as, place the premises together with the yard and curtilage thereof, and any and all outbuildings and vehicles thereon, any persons residing therein and any other person thereon reasonably believed to be connected with said illegal activity for the property described in the attachment hereto and if the same or any part thereof, be found, you are hereby authorized to seize and secure same, giving proper receipt therefore and delivering a completed copy of this warrant to:

1. To the individual from whose person the property was taken.
2. To the person in charge of the premises or thing, or in the absence of any such person, leaving a completed copy where the property is found.

And making a return of your doings under this warrant within ten (10) days of the date hereof, and you are further directed to bring said property found and any person arrested in connection therewith, before the Court having jurisdiction of the offense.

WITNESS my hand and seal this 3<sup>rd</sup> day of March, 2011.

  
\_\_\_\_\_  
Judge of the Circuit Court in and  
for Polk County, Florida.

  
\_\_\_\_\_  
Printed Name of Judge

**DESCRIPTION OF PROPERTY TO BE SEARCHED FOR**

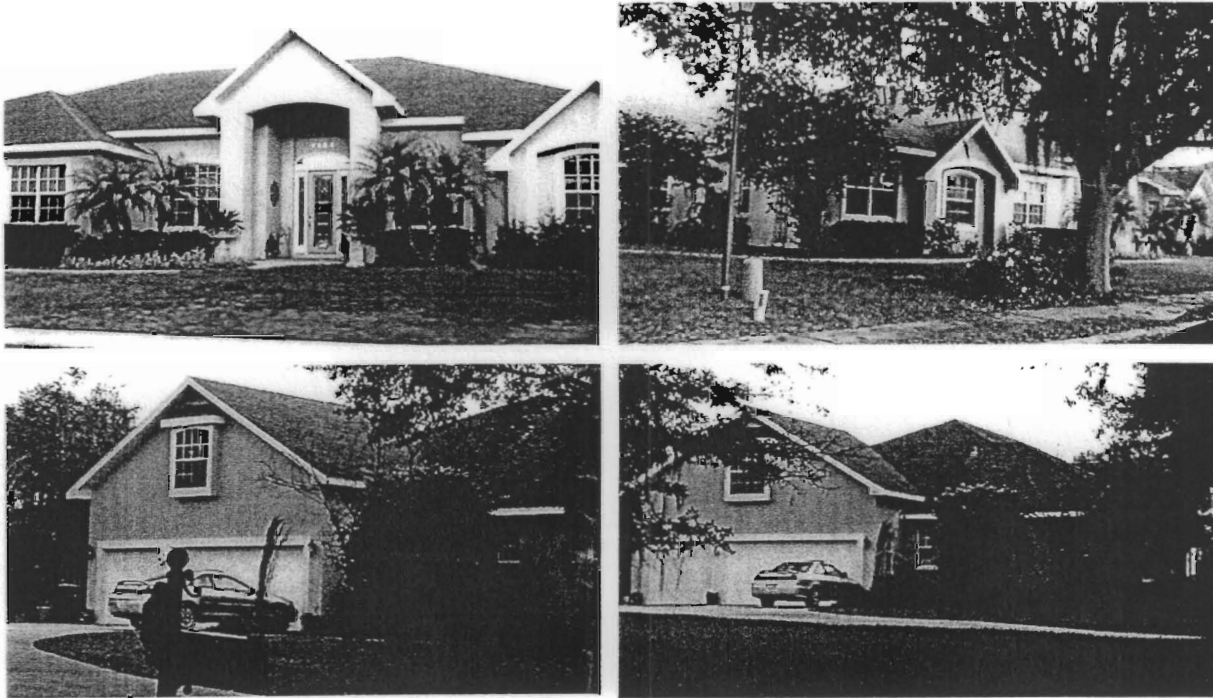
Any documents, whether in digital or hard copy form, either authored by EllenBeth Wachs, also known as EllenBeth Huey or EllenBeth Augsberger, or received by Wachs, in her capacity as Member, Legal Coordinator, Legal Director, Member of the Board of Directors, or Vice President of the corporate entity known as "Atheists of Florida, Inc," including but not limited to any memoranda, correspondence, or other communications authored by Wachs purporting to instruct on or to explain legal principles. This includes, but is not limited to, documents in any digital format such as .doc, .docx, .wpd, .rtf, or .pdf; electronic mail, either archived or saved to a computer's hard drive or removable digital media; HTML or .mht files, or any other electronic media consistent with creation of internet sites; internet message board postings; or archived video files, containing information regarding the unauthorized practice of law. Files generated by a computer's software, transparent to the user, that may indicate the sender(s) or receiver(s) of specific such files that may be located on the computer's hard drive or removable digital storage media. Computer files generated by the computer's software, and transparent to the user, that may indicate what files have been transferred to the computer or to removable digital storage media. Any computers and associated computer hardware, cameras, video cameras, scanners, printers, and other peripherals that can be used in conjunction with a computer; digital storage media including but not limited to cellular telephone(s) and their associated SIM cards or storage devices, CD-ROMs, DVD-ROMs, USB drives, or removable hard drives, that are capable of containing electronic correspondence or archived digital videos or digital photographs.

The forensic examination of a computer or digital media is a time consuming process. An examination can take several days or even weeks. Specialized hardware and software tools are needed to process such evidence. A controlled environment is required to prevent contamination or destruction of evidence. It is therefore necessary that any computers or digital storage media be removed from the location to be searched, and examined under controlled conditions.

**DESCRIPTION OF PLACE TO BE SEARCHED**

The place to be searched is located at [REDACTED] Polk County, Florida. The place to be searched is a single family, single story residence.

From the intersection of Highway 60 and Highway 37, Mulberry, Florida, travel north on Highway 37 (also known as South Florida Avenue) for approximately 5.0 miles to the intersection of Highway 37 and Fitzgerald Road, Lakeland, Florida. Turn right (east) and travel east on Fitzgerald Road for approximately 0.4 miles to the intersection of Fitzgerald Road and Francis Pipkin Road. Turn right (south) and travel south on Francis Pipkin Road for approximately 0.2 miles to the intersection of Francis Pipkin Road and Woodhill Drive/Victoria Square Lane. Continue straight and travel south on Victoria Square Lane and enter into the gated subdivision to the intersection of Victoria Square Lane and Lake Victoria Drive. As Victoria Square Lane makes a ninety degree curve the roadway turns into Lake Victoria Drive. Lake Victoria Drive is a road which makes a complete loop. Continue south on Lake Victoria Drive less than 0.1 miles and turn right onto Lake Victoria Drive (one end of the loop). Continue west on Lake Victoria Drive and travel for less than 0.1 miles to the place to be searched. The place to be searched has a physical address of [REDACTED]



The place to be searched is tan in color with white trim. The residence is located on the east side of the road with the front door facing to the west. The numbers '[REDACTED]' appear horizontal above the front door of the residence in gold. The numbers '[REDACTED]' appear in white, vertically, on a black mailbox at the end of the residence's driveway.

IN THE CIRCUIT/COUNTY COURT IN THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

ARRESTING AGENCY/REPORT #:

DATE/TIME OF ARREST:

ARRESTING OFFICER:

PLACE OF ARREST:

   NOTICE TO APPEAR   X   COMPLAINT AFFIDAVIT    ARREST  
REPORT

The undersigned affiant swears that she has just and reasonable grounds to believe that between June 15<sup>th</sup>, 2010 and February 22<sup>nd</sup>, 2011 at approximately N/A in the vicinity of POLK County, Florida

Name (Last,First,MI): Wachs, EllenBeth

Address: [REDACTED]

R/S: W/F, Ht. 5'3", Wt. 110, Hair: Unk., Eyes: Unk., DOB: 02-18-63

Soc. Sec#: [REDACTED] Drivers Lic#: [REDACTED]

Marital Status: Single, Scars: Unk., Complexion: Fair

Occupation: Internet Sales Employer: Self

Committed the Offenses of:

- |   |                   |
|---|-------------------|
| 1. Engaging in Unauthorized Practice of Law FSS: 454.23 | Level/Degree: F-3 |
| 2. FSS:   | Level/Degree:     |
| 3. FSS:   | Level/Degree:     |
| 4. FSS:   | Level/Degree:     |

**PROBABLE CAUSE:**

"Your affiant (Michael J. Ivancevich) is a certified law enforcement officer with the State of Florida. Your affiant is currently assigned as an investigator with the Office of the State Attorney, Tenth Judicial Circuit, Bartow, FL, and has over 35 years of law enforcement experience in the State of Florida.

On March 1, 2011, your affiant was instructed by Assistant State Attorney Bradford Copley of the Tenth Judicial Circuit to investigate allegations that suspect EllenBeth Wachs, also known as EllenBeth Huey and EllenBeth Augsberger, had been engaging in the unauthorized practice of law in the State of Florida.

Investigation revealed that Ms. Wachs was admitted as an attorney in the State of Pennsylvania in 1993. The Disciplinary Board of the Supreme Court of Pennsylvania lists her as retired. Investigation indicated that Ms. Wachs retired from the Pennsylvania Bar in approximately 1997. According to the Board's website at <http://www.padisciplinaryboard.org/faqs/attorneys.php#attorney>, a "retired" attorney is inactive, and thus not eligible to practice law in the State of Pennsylvania. Your affiant also checked the registry of attorneys of The Florida Bar, at their website at <http://www.floridabar.org/names.nsf/MESearchDK?OpenForm>, and learned that Ms.

Wachs is not now nor has she ever been a member of The Florida Bar and is not licensed to practice law.

The Florida Bar is the agency charged with regulation of the legal profession in the State of Florida, and practicing attorneys are required to be members. Your affiant learned that The Florida Bar defines a "nonlawyer" as a person who is not a member of The Florida Bar. *See Rules Regulating The Florida Bar*, Rule 10-2.1(c). "This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to The Florida Bar, disbarred lawyers, and lawyers who have resigned from The Florida Bar." *Id.* Nonlawyers may not practice law in the State of Florida. Ms. Wachs is a "nonlawyer" as The Florida Bar defines that term.

Between June 16, 2010 and February 14, 2011, Ms. Wachs held herself out to be a licensed Florida attorney. She signed numerous formal letters, using the title "Esq." to refer to herself. This is a title typically used by attorneys in the United States to refer to themselves. The letters were legal in nature citing case law and giving opinions on the law. Those that received these communications were under the impression that Ms. Wachs is an actively practicing licensed Florida attorney. Additionally, these documents are on the letterhead of a Florida nonprofit corporation, known as "Atheists of Florida, Inc." (AoF), chartered under Section 501(c)(3) of the federal tax code. AoF was so chartered in 1992. The documents your affiant reviewed carry the AoF letterhead and list of its corporate staff. Of all the listed staff in the letterhead, Ms. Wachs is the only one referred to as "Esq." Ms. Wachs also uses the title "Esq." in these letters to refer to licensed Florida attorneys, to which copies of the letters are routed.

\* On 12-28, 2010 Atheists of Florida, Inc. sent a letter to Polk County Sheriff Grady Judd. The letter explained the organizations focus of advancing the constitutional principles of the complete separation of church and state, protecting the rights of atheists, agnostics and other non-believers.

The letter went on to state that it came to the attention of the organization that the Polk County Sheriff's office had directed that certain property, purchased and maintained by the county jail (including sporting equipment), is to be given to a number of local churches. The letter stated that this measure was a direct violation of the Florida and United States Constitutions. The letter stated that on behalf of the members of the organization they requested the Polk County Sheriff's office immediately cease and desist this unconstitutional practice.

The letter went on to define the Florida Constitution, Article I, Section 3. The First Amendment to the United States Constitution, which it stated was applicable to local governments under the Fourteenth Amendment.

The letter accused the Sheriff's actions as a violation of "established clauses" of the Florida and United States Constitution. The transfer of taxpayer property to churches is a preference of religion over non-religion, and a preference of recipient churches over other



churches and religions. The letter informed the Sheriff that there was no secular purpose of your office's policy and practice of specifically choosing to donate public property to churches. The donations of the property were to preferentially aid and advance the receiving churches. It stated that the policy and practice was an entanglement by the government with religion.

The letter stated that the Atheists of Florida was not expressing any view on the removal of the property from the jail, its only objection was limited to the transfer of taxpayer assets to directly benefit religious organizations.

The letter requested that the Sheriff's Office respond in writing within five (5) days indicating whether it will cease and desist its policy or practice of giving taxpayer funded property to religious institutions.

The letter was signed by EllenBeth Wachs, Legal Affairs Director. The letter was formally typed and written on letter-head with the Atheists of Florida Inc. seal, which listed the organizations address, e-mail address, phone number, naming of organization Officers, Board of Directors, Executive Director, and Legal Affairs Coordinator. The document was received by the Sheriff's Department on January 3, 2011 and received by the Sheriff's Department Office of Legal Affairs on January 5<sup>th</sup>, 2011. The letter listed the organization's Legal Affairs Coordinator as EllenBeth Wachs, Esq.

\*A second letter was sent to the Polk County Sheriff's Department on January 4<sup>th</sup>, 2011. The letter was sent to the Freedom of Information Officer with the Polk County Sheriff's Office.

The letter followed the same formal letter-head format, seal, listing Officers, Board of Directors and the organization's Legal Affairs Coordinator. The letter was received by the Office of the Sheriff on January 7<sup>th</sup>, 2011.

The letter is sent pursuant to Article 1, Section 24 of the Florida Constitution and pursuant to Fla. Stat. 119.01 et seq., pursuant to which municipal records shall be open to public inspection.

The letter request copies of all public records relative to or concerning, the following:

1. The transfer or donations of basketball and or other sports equipment to Polk County churches that occurred during the month of December 2010, including but not limited to all authorizations, requests, evaluations, assessments, valuations, estimates, inventories, church site preparation materials, vehicle requisitions, records, minutes of meetings, personnel assignment records (whether deputies, corrections officers, inmates, or outside parties) and any other public regards regarding the donation of said municipal property and installations of said property on recipient property;
2. The selection of recipients for said basketball and or other sports equipment, including but not limited to all memoranda, inventories, notes, requests,

evaluations, approvals, communications, and any and all other documents related to the selection of recipients of the property;

3. The initial purchase and installation at county jails of said basketball and or other sports equipment by Polk County or any agent or agency thereof, including but not limited to purchase orders, receipts, invoices, contracts, installation contracts, bonds, custody receipts, service contracts, inventories, and any and all other public records related to the initial purchase of said equipment;
4. Any and all initial policies, procedures, practices and other public records relating to the process of determining whether municipal property ought to be sold or donated, whether municipal property is obsolete or surplus, and any all other public records concerning;
5. The requirements for the recording of property and for the periodic review of property for inventory purposes as required in Fla. Stat. 274.01(2);
6. Any and all public records concerning any and all other donations of surplus or obsolete property by the Polk County Sheriff's Department at any time in the last five (5) years;
7. If all or part of any record is claimed to be exempt from disclosure, please state the basis of the alleged applicable exemption and include the statutory citation to an exemption created or afforded by statute and also state in writing and with particularity the reasons for the conclusion that the record is exempt. Fla. Stat. 119.07 (2)(a).

The letter was signed by EllenBeth Wachs. Below her signature it is typed EllenBeth Wachs, Esq.

\*On February 14<sup>th</sup>, 2011, a third letter was sent to the Polk County Sheriff's Department from the Atheists of Florida, Inc. The letter followed the same letter-head format as the previous two letters, having the organization seal, address, e-mail address, telephone number, organization Officers, Board of Directors, and Legal Affairs Coordinator EllenBeth Wachs, Esq.

The letter was received by the Polk County Sheriff's Department on February 17<sup>th</sup>, 2011. The letter was addressed to Ann Gibson the Polk County Sheriff's Department Legal Affairs Director. The letter is a follow up to the second letter sent to the Polk County Sheriff's Department, which requested public records concerning basketball equipment and or other sports equipment relating to the decision-making into and actual transfer of the sports equipment at the county jail. The letter stated that documents and information that were not included which were requested and further information had come to light which necessitated this follow up request. The letter stated that it will reiterate portions of the original request in addition to adding new requests for other information.

The letter requested copies of all public records relative to or concerning, the following not previously provided:



1. The transfer or donation of basketball and or other sports equipment to Polk County churches that occurred during the month of December 2010, including but not limited to all authorizations, requests, evaluations, assessments, valuations, estimates, inventories, church site preparation materials, vehicle requisition records, minutes of meetings, personnel assignment records, (whether Majors, deputies, corrections officers, inmates, or outside parties) and any other public records regarding the donation of said municipal property and installation of said property on recipient property. This request includes, but is not limited to, the personnel assignment and vehicle requisition records, during the three month planning stage of "The Basketball Goal Relocation Project" prior to the actual transfer of the equipment.
2. Internal department forms declaring specific equipment as obsolete;
3. Minutes of meetings, memoranda and or any other communication in any manner whatsoever that documents and memorializes Sheriff Judd's assertion that the "Basketball Goal Relocation Project" had been vetted by his legal department.
4. The criteria and or basis for the selection of recipients for said basketball and or other sports equipment, including but not limited to all memoranda, inventories, notes, requests, evaluations, approvals, communications, and any and all other documents related to the selection of recipients of the property;
5. Any correspondence, memoranda, notes, emails, letters, receipts, copies of checks, notations of monies received in relation to any donation received by the department in regard to the basketball Goal Relocation Project;
6. Any and all transcripts and or notes or memoranda of phone conversations with any organization or person in relation to the transfer of equipment;
7. If any or part is claimed to be exempt from disclosure, please state the basis of the alleged applicable exemption and include the statutory citation to an exemption created or afforded by statute and also state in writing ant with particularity the reason for the conclusion that the record is exempt. Fla. Stat. 119.07(2)(a).

The letter is signed by EllenBeth Wachs. Below her signature her name is typed as EllenBeth Wachs, Esq.

On February 16<sup>th</sup>, 2011 Assistant State Attorney Bradford Copley met with Ann Gibson Polk County Sheriff's Department Legal Affairs Director. ASA Copley obtained a sworn statement under oath from Ms. Gibson.

Ms. Gibson informed ASA. Copley that through her personal contacts with EllenBeth Wachs, she Ms. Gibson was under the impression that Ms. Wachs was a licensed practicing attorney. Ms. Gibson's impressions were based under a totality of circumstances such as: the manner in which the above described letters were written, Ms. Wachs spoke like an attorney citing statute and case law opinions, and the fact that Ms. Wachs informed Ms. Gibson that she was representing the atheist organization when personal contact was made.

\*On March 2<sup>nd</sup>, 2011 your affiant obtained a sworn statement under oath from City of Lakeland Mayor Gow Fields. Mr. Fields has been representing the City of Lakeland for

the past 19 years, in the capacity as a City Commissioner and currently Mayor. Mayor Fields commonly has contact with licensed attorneys.

Mayor Fields informed me that in either March or April of 2010 he met personally with EllenBeth Wachs and Rob Curry. At the time of this meeting EllenBeth Wachs was a Director for the Atheists of Florida. Mr. Curry was an Executive Director for the organization. Mayor Fields informed me that based upon his contact with Ms. Wachs he felt that Ms. Wachs was a practicing licensed attorney.

The purpose of this meeting regarded the Atheists of Florida's position on the City of Lakeland having Christian clergy invited to perform what the atheist organization termed "religious rituals" at public meetings of the Lakeland City Commission. The Atheists stated in a letter to Mayor Fields dated March 15<sup>th</sup>, 2010 that the practice of pray at the open city commission meeting was an "outrage that we cannot ignore". The letter followed the same formal format as the letters that were sent to the Polk County Sheriff's Department regarding the donation of basketball goals and or sports equipment to various Polk County churches.

The letter stated Atheists of Florida view on prayer at the meeting and asked Mayor Fields to answer three (3) questions.

1. What exactly is the purpose in having official government prayer as an integral part of the Commission meetings?
2. Given the real prejudice experienced by atheists and non-christian religious minorities in Lakeland, why would you deliberately put ordinary, everyday citizens from a wide variety of backgrounds into the difficult position of having to take what amounts to a public test of religious conformity at City Hall?
3. Can you support a silent moment of reflection as a way to give each and every citizen the personal choice to pray or not (as they prefer), without singling anyone out as happens with current practice?

The letter to Mayor Fields ends: "We encourage you to carefully consider the implications of having the City of Lakeland arbitrarily single out atheists or anyone for this kind of exclusion, disrespect and threat of exposure to discrimination". The letter was signed by Rob Curry, Executive Director, Atheists of Florida.

Mr. Fields stated that both Ms. Wachs and Mr. Curry wanted invocation removed from the City Commission meeting agenda. Mr. Fields informed me that during midway into their conversation things got "pretty heated" between Mr. Fields, Mr. Curry, and Ms. Wachs. Both Mr. Curry and Ms. Wachs informed Mayor Fields that having a moment of invocation at the City Commission meeting was unconstitutional. It was at this point in the meeting that Ms. Wachs informed Mayor Fields that she should know because she is an attorney and that if he and the city did not comply with the request to remove prayer from the commission meeting they would sue the City of Lakeland. Ms. Wachs cited to Mayor Fields that the separation of church and state was in the constitution.

\*On March 1<sup>st</sup>, 2011 Assistant State Attorney Bradford Copley and I met with Mrs. Stacy Butterfield at the State Office of the State Attorney in Bartow, Fl. Mrs. Butterfield was sworn in under oath by ASA Copley. Ms. Butterfield is a 3 year member of the Board of Directors for the Lake Victoria Homeowners Association. The Homeowners Association is based in Lakeland, Florida. The Lake Victoria subdivision is the same location in which Ms. Wachs maintains a residence and resides. Mrs Butterfield is employed by the local Court Clerk's office and commonly has contact with licensed attorneys.

Mrs. Butterfield stated that she was under the impression that Ms. Wachs was a licensed practicing attorney. I asked Mrs. Butterfield what gave her this impression. Mrs. Butterfield stated that it was based upon what Ms. Wachs informed her and that was that she Ms. Wachs was an attorney. Mrs. Butterfield stated that this information was received from Ms. Wachs about a year ago and was not sure if this occurred during one of the Homeowners Association meetings or not, but that the information came from Ms. Wachs herself.

Mrs. Butterfield stated that the Homeowners Association sent Ms. Wachs a letter in regard to the standards for yards in the neighborhood in which the yard of Ms. Wachs did not meet the standards of the association. Mrs. Butterfield sent Ms. Wachs a document in regards to the issue since Ms. Wachs said she was an attorney."

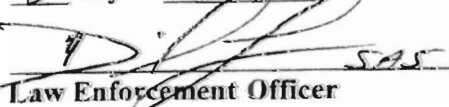
It is apparent to this investigator that based on the documents provided to me for my review, which were from Ms. Wachs as "Esq" to various witnesses mentioned in this affidavit, that those witnesses/recipients could have easily thought that she was an active and practicing attorney in the State of Florida.

(End SAI Ivancevich complaint affidavit)

Victim/Witness	Address	Phone
Victim: State of Florida		
Witness: #1. Ann Gibson, Legal Affairs Director, Polk County Sheriff's Department.		
Witness: #2. Gow Fields, Mayor, City of Lakeland		
Witness: #3. Stacy Butterfield, [REDACTED]		

Investigating Agcy/Officer: Office of the State Attorney, Investigator M. J. Ivancevich #14

Sworn to and Subscribed before me,  
The undersigned authority, this  
3 day of MARCH, 2011

  
Law Enforcement Officer

  
AFFIANT

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, STATE OF FLORIDA

STATE OF FLORIDA

CASE #:

**CF11-002981**

vs.

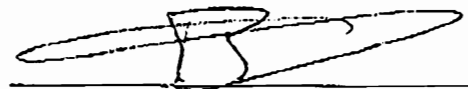
ELLENBETH WACHS, W/F, [REDACTED]

**DIRECT**  
**INFORMATION FOR:**

- 1) SIMULATION OF A SEXUAL ACT IN THE PRESENCE OF A CHILD

In the Name and by Authority of the State of Florida:

JERRY HILL, State Attorney for the Tenth Judicial Circuit, by and through his undersigned Assistant State Attorney, charges that ELLENBETH WACHS on or about March 13, 2011, in the County of Polk and State of Florida, did, while 18 years of age or older, in the presence of FL, a child under 16 years of age, intentionally commit a sexual act not involving actual physical or sexual contact, including but not limited to sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity, contrary to Florida Statute 800.04.(7) (2 FEL DEG) (LEVEL 5)



BRADFORD H COPLEY  
FL. BAR NO.: 0437662  
Assistant State Attorney  
Polk County, Florida

STATE OF FLORIDA  
COUNTY OF POLK

Appeared before me, BRADFORD H COPLEY, Assistant State Attorney for Polk County, Florida, personally known to me, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged, that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense.



Assistant State Attorney

Sworn to and subscribed to before me this 29<sup>TH</sup> day of APRIL  
, 2011.



NOTARY PUBLIC, State of Florida

CO-DEFENDANT(S):



SHEILA D. TINDLE  
MY COMMISSION # 00 910713  
EXPIRES: September 25, 2013  
Bonded Thru Budget Notary Services

FILED  
CLERK OF DISTRICT COURT  
JAN 11 2012  
POLK COUNTY, FLORIDA

## AFFIDAVIT

AFFIDAVIT NUMBER  
FLOS300000Sheriff's  
Polk CountyOffice  
Bartow, FL

FORM #9013 - Revised 03/08/03

INCIDENT NUMBER  
2011-038031

JUVENILE



ADULT

BOOKING #

OBTS #

IN CIRCUIT/COUNTY COURT IN THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FL

SUBMITTING MEMBER DETECTIVE ERIC DANIEL

MEMBER # 5185V

DATE/TIME OF ARREST/INCIDENT 03/13/2011

08:45

EVIDENCE COLLECTED

YES

NO



LOCATION OF INCIDENT

CROSS STREET

COMPLAINT AFFIDAVIT



ARREST REPORT

CITY OF COUNTY

COUNTY OF POLK, STATE OF FLORIDA

THE UNDERSIGNED AFFIANT SWEARS SHE/HIS HAS JUST AND REASONABLE GROUNDS TO BELIEVE THAT ON 03/13/2011

AT

APPROXIMATELY 08:45 AM

IN THE VICINITY OF

LAKELAND

POLK COUNTY, FLORIDA

WACHS

ELLEN

BETH

ALIAS

LAST

FIRST

MIDDLE

PHONE UNKNOWN

ADDRESS

RACE WHITE

SEX FEMALE

DOB

HT 5-03

WT 110

EYE

BLUE

HAIR BLOND

COMPLEXION MEDIUM

BUILD SLENDER

SPEECH NORMAL

POB PA

SCARS/MARKS/TATTOOS

MARITAL STATUS SINGLE

DL#

ST FL

SS#

OCCUPATION SELF

EMPLOYER/SCHOOL

PHONE

JUV-PARENTS

PHONE

**PROBABLE CAUSE TO FOLLOW VICTIM/WITNESS INFORMATION**

COMMITTED THE OFFENSE(S) OF:

1) SIMULATION OF A SEXUAL ACT IN THE PRESENCE OF A CHILD

FSS

800.04 (7)

LEVEL/DEGREE F/2

VICTIM: OTTO LEHMAN

NAME

ADDRESS

PHONE

**IN CIRCUIT/COUNTY COURT IN THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA****PROBABLE CAUSE:**

ON 04/26/11, AT 0845 HOURS, I ATTENDED A HEARING FOR AN INJUNCTION FOR PROTECTION IN COURTROOM 6B AT THE POLK COUNTY COURTHOUSE, 255 NORTH BROADWAY AVENUE, BARTOW, FL. THE INJUNCTION HEARING WAS REQUESTED BY OTTO LEHMAN, PETITIONER, AGAINST ELLEN BETH WACHS, RESPONDENT. MR. LEHMAN HAD PREVIOUSLY CONTACTED THE POLK COUNTY SHERIFF'S OFFICE TO ALERT US ABOUT HIS CASE. I HAD A PREVIOUS ENCOUNTER WITH WACHS DURING THE EXECUTION OF A SEARCH WARRANT, WHICH I AUTHORED, ON MARCH 3, 2011. MY PURPOSE FOR ATTENDING THE HEARING WAS TO DETERMINE IF ANY CRIMINAL ACTIONS HAD BEEN COMMITTED BY WACHS TO CAUSE LEHMAN TO PETITION FOR AN INJUNCTION. I MADE ASA B. COPLEY AWARE OF MY PRESENCE AT THE COURTHOUSE AND THE INJUNCTION CASE SINCE HE IS THE PROSECUTING ASSISTANT STATE ATTORNEY ON WACHS PREVIOUS CASE. UPON MAKING CONTACT WITH THE BAILIFF IN THE COURTROOM, I LEARNED WACHS HAD NOT BEEN SERVED WITH A NOTICE FOR THE HEARING. I ALSO DID NOT OBSERVE WACHS IN THE COURTROOM.

AFTER SPEAKING WITH ASA COPLEY HE ADVISED HE WOULD LIKE TO SPEAK WITH THE PETITIONER AND ME AFTER THE COURT HEARING. I OBSERVED AS THE JUDGE CALLED LEHMAN'S COURT CASE AT WHICH TIME MR. LEHMAN WAS THE ONLY PERSON INVOLVED IN THE CASE TO RESPOND TO THE PODIUM. THE JUDGE ADVISED MR. LEHMAN THE NEED FOR WACHS TO BE SERVED AND RESET THE COURT HEARING FOR MAY 17, 2011 AT 0845 HOURS TO PROVIDE TIME FOR WACHS TO BE SERVED. THE JUDGE TOLD LEHMAN THE HEARING COULD PROCEED ONLY IF AND WHEN WACHS WAS SERVED. LEHMAN TOLD THE JUDGE THAT HE HAD OBSERVED WACHS TO BE HOME WHEN THE PROCESS SERVER TRIED TO SERVE HER BUT WACHS WOULD NOT COME TO THE DOOR AND SHE HAS CONTINUED TO AVOID BEING SERVED WITH LEGAL PROCESS. AFTER MR. LEHMAN

AFFIDAVIT  
CONTINUATION

Agency Old Number  
FLO5300000

Sheriff's  
Polk County



Office  
Bartow, FL

FORM #9013A - Revised 01/08/03

INCIDENT NUMBER  
2011-038031

RECEIVED HIS COPY OF THE COURT PAPERWORK I ESCORTED HIM AND HIS FAMILY TO ASA COPLEY'S OFFICE IN ORDER TO INTERVIEW THEM.

WHILE IN ASA COPLEY'S OFFICE MR. AND MRS. LEHMAN IN MY PRESENCE WERE PLACED UNDER OATH. WHILE SPEAKING TO THE LEHMANS I REVIEWED THE COPY OF THE PETITION FOR INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE. INCLUDED IN THE PETITION I NOTED SEVERAL SIGNED STATEMENTS OF WITNESSES WHICH HAD BEEN PREPARED AND FILED WITH THE COURT DOCUMENTS.

FROM THE DOCUMENTS AND BY SPEAKING TO THE LEHMANS I LEARNED THAT ON OR ABOUT MARCH 13, 2011, AT APPROXIMATELY 0830 HOURS, THE LEHMAN'S YOUNGEST SON (IDENTIFIED AS F.L. - 10 YEAR OLD MALE) WENT OUTSIDE HIS RESIDENCE TO PLAY BASKETBALL. ONCE F.L. WENT OUTSIDE AND BEGAN TO PLAY, WACHS (WHO F.L. WAS ABLE TO IDENTIFY BASED ON NUMEROUS PREVIOUS ENCOUNTERS) YELLED AT F.L. TO STOP BECAUSE SHE WAS TRYING TO SLEEP. F.L. THEN WENT INSIDE AND TOLD MR. LEHMAN ABOUT WACHS YELLING AT HIM TO STOP PLAYING AT WHICH TIME MR. LEHMAN TOLD F.L. THAT HE HAD THE RIGHT TO PLAY BASKETBALL IN HIS YARD DURING THE DAY. THE 10 YEAR OLD WOULD NOT GO BACK OUTSIDE AS HE WAS FEARFUL OF WACHS BECAUSE OF PREVIOUS INAPPROPRIATE BEHAVIOR BY HER TOWARDS CHILDREN. MR. LEHMAN THEN ACCOMPANIED F.L. OUTSIDE TO PLAY BASKETBALL WITH HIM IN ORDER TO SHOW HIM IT WAS OKAY TO PLAY. THE TEN YEAR OLD WAS IN THE HOUSE FOR LESS THAN ONE MINUTE BEFORE GOING BACK OUTSIDE WITH HIS FATHER. ONCE OUTSIDE AND WHILE PLAYING BASKETBALL MR. LEHMAN AND F.L. BEGAN TO HEAR WACHS FROM THE SAME OPEN BEDROOM WINDOW WHICH SHE HAD MOMENTS EARLIER YELLED AT F.L. FROM. THIS TIME HOWEVER, WACHS WAS YELLING, "OH JOHN" OVER AND OVER AGAIN AND KEPT INCREASING IN VOLUME TILL IT WAS A LOUD SCREAM. MR. LEHMAN AT FIRST TOLD HIS SON TO IGNORE HER, BUT IT BECAME EVIDENT TO HIM THAT SHE WAS NOT GOING TO STOP UNTIL THEY WENT BACK INTO THEIR HOUSE. MR. LEHMAN STATED THE STATEMENTS WHICH WACHS WAS SAYING WERE ACCOMPANIED WITH A MOAN AND OTHER SEXUAL SOUNDS WHICH SOUNDED LIKE A WOMAN EXPERIENCING SEXUAL GRATIFICATION IN AN EXTREMELY VOCAL FASHION. MR. LEHMAN STATED WACHS CONTINUED HER SEXUAL OVERTONES UNTIL MR. LEHMAN AND HIS SON RETREATED INTO THEIR HOUSE. MR. LEHMAN STATED HIS SON, 10 YEAR OLD F.L., BEGAN TO QUESTION WHAT WACHS WAS DOING AND BECAME SCARED AND WORRIED AT WHAT MAY BE HAPPENING IN WACHS' HOME AND WHETHER SHE WAS BEING INJURED. MR. LEHMAN STATED AS A RESULT OF THE MOANING AND SEXUAL INFERENCES BEING MADE BY WACHS SIMULATING A SEXUAL ACT AND HIS SON'S REACTION TO IT, HE HAD NO CHOICE BUT TO GO INSIDE. MR. LEHMAN BELIEVES THIS WAS WACHS' GOAL AND PURPOSE FOR HER CRIMINAL BEHAVIOR TOWARD HIS 10 YEAR OLD SON.

MR. LEHMAN TOOK F.L. INSIDE AND ADVISED MRS. LEHAM ABOUT THE EVENTS WHICH HAD OCCURRED OUTSIDE. MR. AND MRS. LEHMAN STATED F.L. SEEMED CONCERNED ABOUT WHAT HAPPENED OUTSIDE AND ASKED SEVERAL QUESTIONS ABOUT WHY WACHS WAS MAKING SUCH NOISES. MRS. LEHMAN STATED SHE WAS VERY DISTRAUGHT OVER HER SON'S EMOTIONAL STATE AND AS SUCH STRUGGLED TO MAKE UP A QUICK EXCUSE TO COVER WACHS' ACTIONS. MR. AND MRS. LEHMAN'S TEN YEAR OLD SON STILL REFUSES TO GO OUTSIDE TO PLAY BASKETBALL SINCE THIS INCIDENT. HE REMAINS SCARED OF WACHS AND AVOIDS HER AT ALL TIMES. F.L. DOES NOT HAVE FRIENDS OVER TO HIS HOUSE TO PLAY, NOT BECAUSE HE DOES NOT WANT TO BUT BECAUSE HIS FRIENDS HAVE DEALT WITH WACHS' VERBAL ABUSE AS WELL AND DO NOT WISH TO REPEAT THE EXPERIENCE.

ON APRIL 15, 2011, MR. LEHMAN'S OLDER SON, IDENTIFIED AS H.L. A 16 YEAR OLD MALE, WAS PRACTICING DRIVING A MANUAL TRANSMISSION VEHICLE ON THE LEHMAN'S INCLINED DRIVEWAY. AFTER H.L. HAD FINISHED PRACTICING HE WENT INSIDE HIS HOUSE BRIEFLY THEN RETURNED TO PLAY BASKETBALL. MR. LEHAM POINTED OUT THAT WACHS' VEHICLES ARE PARKED ON THE OPPOSITE SIDE OF THE HOUSE, HOWEVER, WACHS DECIDED TO DRIVE HER CORVETTE TO THE SIDE OF THE HOUSE CLOSEST TO THE LEHMAN'S ON THE GRASS WHERE THERE IS LIMITED AREA BETWEEN THE TWO RESIDENCES. H.L. ADVISED MR. LEHMAN THAT WACHS BEGAN ASKING QUESTIONS LOUDLY AS IF TO START A CONVERSATION WITH H.L. WHEN WACHS DID NOT GET A RESPONSE FROM H.L. SHE THEN AGAIN ASKED IN A LOUD GENERAL MANNER IF HE [H.L.] WAS ALLOWED TO TALK TO THEM [WACHS AND HER BOYFRIEND]. AT THIS TIME H.L. RESPONDED HE COULD SPEAK TO THEM HOWEVER HE CHOSE NOT TO. IT APPEARED TO H.L. THAT HIS STATEMENT ANGERED WACHS AS SHE THEN BEGAN TO MAKE STATEMENTS SUCH AS, "YOU'RE RUDE, YOU WEREN'T BROUGHT UP RIGHT", "THAT IS NO SURPRISE, YOUR FATHER IS A PRICK". WACHS CONTINUED TO MAKE STATEMENTS IN GENERAL, BUT LOUD ENOUGH FOR H.L. TO HEAR SUCH AS, "FUCKING EASTER IS STUPID" AND THAT CHRISTIANS ARE STUPID TO BELIEVE SUCH A "FUCKING SUPERSTITION" AS WELL AS HOW EASTER IS JUST



AFFIDAVIT  
CONTINUATION

Agency ORI Number  
FL05300000

Sheriff's  
Polk County



Office  
Bartow, FL

FORM 49023A - REVISED 01/08/03  
INCIDENT NUMBER  
2011-038031

ABOUT SEX AND THAT IS WHY THE SYMBOL OF A RABBIT IS USED SINCE "RABBITS FUCK ALL THE TIME". WACHS THEN CONTINUED WITH HER RHETORIC AND IN RESPONSE TO NEIGHBORS EASTER DECORATIONS, STATED SHE NEEDS TO PUT ORGY SIGNS IN HER FRONT YARD AS WELL AS HANG CONDOMS FROM THE TREE. WACHS THEN MADE STATEMENTS ABOUT POLITICS AND RELIGIOUS VIEWS, ALL WHILE USING PROFANITY IN WHAT H.L. DESCRIBED AS 'IN ALMOST EVERY SENTENCE'. WACHS THEN MADE THE STATEMENT ABOUT H.L. LEARNING TO DRIVE AND HOW HARD COULD IT BE FOLLOWED BY "WELL YOU ARE THE BRAINWASHED ONE BUT THERE MAY STILL BE HOPE FOR THE YOUNGER ONE, EVERY TIME HE COMES OUT WE WILL GIVE HIM A LECTURE."

ON APRIL 26, 2011 IN ASSISTANT STATE ATTORNEY COPLEY'S OFFICE I ALSO LEARNED FROM MR. LEHMAN THAT HE HAD BROUGHT ADDITIONAL DOCUMENTATION AS PROOF IN HIS HEARING ABOUT WACHS' ATTITUDE AND ACTIONS TOWARDS OTHER CHILDREN WHICH SHOW A PATTERN OF EXTREME HOSTILITY AND IRRATIONAL RAGE. THE FOLLOWING IS A LETTER FROM ANOTHER FAMILY:

TO WHOM IT MAY CONCERN:

IN AUGUST OF 2010, MY FAMILY AND I VISITED THE HOME OF OTTO AND ANN LEHMAN FOR A DAY OF FISHING, SWIMMING AND SOCIALIZING. AFTER FISHING FOR A FEW HOURS OFF THE LEHMAN'S DOCK, MY 15 YEAR OLD DAUGHTER AND THE LEHMAN'S OLDEST SON, ACCIDENTALLY CAUGHT A HOOK ON SOME PLANT GROWTH IN THE LAKE. IN ORDER TO DISLODGE THE HOOK, MY DAUGHTER TOOK 2 STEPS ONTO MS. WACHS' PROPERTY. AT THIS POINT, MS. WACHS STORMED ONTO HER POOL DECK AREA YELLING AT THE CHILDREN TO GET OFF HER PROPERTY. SINCE SHE HAD ONLY TAKEN 2 STEPS ONTO THE NEIGHBOR'S PROPERTY, MY DAUGHTER WAS COMPLETELY SHOCKED AND FRIGHTENED BY MR. WACHS' OUTBURST AND FELT AS THOUGH MS. WACHS HAD BEEN WATCHING AND WAITING FOR THEM TO GO ON HER PROPERTY. THE LEHMAN'S SON APOLOGIZED FOR STEPPING ON HER PROPERTY BUT MS. WACHS PERSISTED WITH HER OUTBURST. AT THIS POINT, MY DAUGHTER CAME INSIDE AND THOUGH WE OFFERED TO ACCOMPANY HER BACK OUTSIDE, MY DAUGHTER ADAMANTLY REFUSED TO RETURN TO THE DOCK, THUS ENDING AN ENJOYABLE TIME SHE HAD FISHING THAT DAY.

BASED ON THE ABOVE PATTERN OF BEHAVIOR BY WACHS IN RELATION TO CHILDREN AND THE PARTICULAR CIRCUMSTANCES OF MARCH 13, 2011 IT IS EVIDENT THAT SHE INTENTIONALLY SIMULATED AN ACT INVOLVING SEXUAL ACTIVITY IN ORDER TO ACHIEVE HER GOAL OF EMBARRASSING THE FATHER AND STOPPING THE BOY FROM PLAYING BASKETBALL IN VIOLATION OF F.S.S. 800.04(7).

SWORN TO AND SUBSCRIBED BEFORE ME, THE UNDERSIGNED AUTHORITY, THIS 29 DAY OF APRIL 2011

Det James Trudo 6332  
DEPUTY CLERK/NOTARY PUBLIC, SO

Det [Signature] 5185  
AFFIANT

PERSONALLY KNOWN

PRODUCED ID

ID TYPE

NO BILL/PETITION

PROSECUTION APPROVED

ASSISTANT STATE ATTORNEY